

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant and Owner: David Biddle, P.O. Box 190, Hatfield, MA 01038

Date Application filed with the Town Clerk: June 28, 2006

Nature of request: Petitioner seeks a Special Permit, under Section 3.321 of the Zoning Bylaw, to convert the existing building to a two-family dwelling.

Location of property: 382 North Pleasant Street, Map 11C, Parcel 118, R-G Zone

Legal notice: Published in the Daily Hampshire Gazette on July 4 and July 11, 2006, and sent to abutters on June 30, 2006.

Board members: Thomas Simpson, Russell Frank and Jane Ashby

Submissions:

Prior to the public hearing on July 18, 2006, the applicant submitted the following documents:

- A Site Plan prepared by David J. Miller, dated August 1975;
- Floor Plans dated July 10, 2006, showing the proposed layout of the house, including approximate window locations and sizes and door locations;
- A Management Plan, undated;
- A copy of a standard lease which the applicant proposes to use for this property.

At the continued public hearing on July 27, 2006, the applicant submitted the following documents:

- A Site Plan prepared by Vreeland Design Associates, dated July 26, 2006, Sheet 1;
- Floor Plans prepared by Vreeland Design Associates, dated July 26, 2006, Sheets 1 and 2.

Town staff submitted the following documents:

- Copies of previous Special Permits and Denial Decisions issued on this property, including: ZBAFY2006-00031, ZBA FY2005-00040, ZBA FY2003-00044, ZBA FY97-0010, ZBA FY88-52 and ZBA FY81-39 which are on file with the records of the Zoning Board of Appeals in the Planning Department;
- Memorandum from the Planning Department, dated July 11, 2006, commenting on the application;
- Memorandum from the Fire Department, dated July 14, 2006, commenting on the application;

Site Visit: July 18, 2006

At the site visit the Board was met by David Biddle. The Board observed the following:

- The location of the house on a heavily-traveled road close to the University of Massachusetts, surrounded by single-family and multi-family homes, current and former fraternity buildings and university-related administration buildings;
- The three-story wood-frame structure that has been used as a rooming house, a sorority house and a fraternity house for many years;
- The open, sloping site;

- The large front porch;
- The interior of the building including the basement, the first, second and third floor bedrooms and common rooms, the fire escape on the north wall of the exterior of the building, the front entry hallway and stairways to the upper floors and basement;
- The undefined and rutted gravel driveway providing access to an undefined and rutted gravel parking area and to the dumpster located at the rear of the site.

Public Hearing: July 18, 2006.

At the public hearing David Biddle presented the petition. He made the following statements:

- The house has been used as a fraternity for many years;
- The fraternity that had occupied the house most recently has moved out;
- The applicant proposes to convert this former fraternity to two apartments;
- The first floor and basement will comprise Apartment #1;
- The second and third floors will comprise Apartment #2;
- There had been 18 tenants when the building was occupied by a fraternity; the current proposal would reduce the number of tenants to 8; the house will not be owner-occupied;
- There will be no noise allowed after 10:00 p.m.;
- There is enough room for 10 angled parking spaces, located west of the large tree;
- There will be no parking on the front lawn or in front of the large tree;
- The dumpster in the rear of the site is located close to the property line;
- There are spaces for storage at the back of the house, underneath the stairs and in the basement, as well as a storage area upstairs for the second apartment;
- Mr. Biddle takes care of the lawn care and snow removal; Karl's Excavating also does snow removal when Mr. Biddle is unable to do so;
- There is a volleyball court in back of the house which has floodlights for night-time play; these lights are on a motion sensor and only come on if there is motion detected; the volleyball lights shine onto Mr. Biddle's property but do not spill over onto adjacent properties;
- There are lights on the front porch which do not shine onto adjacent properties;
- The owner currently pays for all utilities; however he will be installing separate electric meters for each apartment and one for the common areas as part of the renovations; there will be one electric service coming in from the street which will be split when it gets to the house;
- There will be 3 or 4 bedrooms for the downstairs apartment and 4 for the upstairs apartment;
- The driveway and parking areas will be "hard-pack"; they will not be paved with asphalt paving;
- It is not possible to delineate parking spaces on a "hard pack" surface by painting lines;
- There will be more landscaping planted in front of the house;
- Lambda Chi Alpha owns the property to the south at 374 North Pleasant Street; it is rented on the 1st and 2nd floors to a fraternity and the upper floors are rented to others;
- Hillel House is located on the north side;
- Mr. Wood owns the property to the west at 15-17 Fearing Street;
- The house under consideration cannot be entered from the lower, basement level; the door is locked from the outside; however the door can be used as an exit from the basement space;
- There may be a need for key access to the basement for someone to work on the boiler;
- There is an entrance to both apartments from the front hallway;
- Snow that is plowed from the driveway is pushed down the driveway and deposited on the north side of the dumpster.

The Board and Mr. Biddle discussed the issue of access to each first floor bedroom from the front hallway. The issues of privacy and safety were discussed.

The Board and Mr. Biddle discussed the appliances that would be installed in the kitchens. Mr. Biddle stated that tenants may prefer to have dorm-type refrigerators in their rooms in addition to a dorm-type refrigerator in the kitchen, rather than having one large refrigerator for each apartment that the tenants share. The stove in the upper apartment is very small, only 20 inches wide. Each apartment will be rented to a group of people. Rental to individuals would constitute a rooming house which would not be allowed in this zoning district.

Ms. Ashby stated that the requirements of the Zoning Board state that the plans submitted to the Board need to be prepared by a Registered Landscape Architect or a Registered Engineer.

The Board, the applicant and Bonnie Weeks, Building Commissioner, discussed the possibility of redesigning the access for the first-floor bedrooms so that bedrooms will not be directly accessible from the common entry hallway.

Sy Friedman of 10 Allen Street spoke in support of the application. He expressed the view that the use as a two-family house would be less detrimental to the neighborhood than the previous use as a fraternity.

Jeffrey Wood of 24 Meadow Brook Drive, Hadley, and owner of 1517 Fearing Street, the property immediately to the west of Mr. Biddle's lot, also spoke in support of the application. However, he expressed concern about storm drainage. He requested that the Board require that the storm drainage be managed so that it will not flow onto his property.

Mr. Frank asked about the connection between the driveways of the properties at 382 North Pleasant Street and at 374 North Pleasant Street and whether a vehicle could drive through from one property to the other. The Board discussed closing off the access to 374 North Pleasant Street to prevent driving through.

Mr. Simpson commented that the existing parking layout was not satisfactory. It does not provide enough room between the back of the cars and the south wall of the building. Also, it is difficult to turn around from an angled parking space and drive out frontward onto North Pleasant Street. The Board and Mr. Biddle discussed the parking layout. They also discussed the number of spaces that should be provided. The Zoning Bylaw requires that a minimum of 4 spaces be provided, 2 spaces for each dwelling unit.

Ms. Ashby reiterated her concern about the quality of the plans and stated that she would like to see a set of revised plans, including the site plan and the interior plans, prepared in accordance with Zoning Board of Appeals requirements.

Mr. Friedman stated that parking spaces should not be limited to the 4 spaces required by the Bylaw because these apartments will contain 3 or 4 bedrooms each and each bedroom will house a tenant. There will be 6 to 8 tenants and each tenant might have a car. He recommended to the Board that it require 8 parking spaces to serve the house none of which should be located in front of the existing large tree on the south side of the lot.

The Board discussed the requirements for the revised floor plans and site plan that Mr. Biddle would need to submit. The Board listed the requirements and asked Mr. Biddle to return with revised plans prepared by a Registered Engineer or Landscape Architect for the site and a Registered Engineer or Architect for the building.

Mr. Frank MOVED to continue the evidentiary portion of the public hearing to Thursday, July 27, 2006, at 7:30 p.m. Jane Ashby SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing – July 27, 2006

At the continued public hearing Mr. Biddle presented new plans including a site plan and floor plans dated July 26, 2006, prepared by Vreeland Design Associates and stamped by David A. Vreeland, Registered Professional Civil Engineer. Mr. Biddle made the following comments:

- The site had been surveyed; the new plans show proposed site improvements and building renovations;
- The interior of the first floor had been redesigned to show a new hallway configuration with entry doors into each apartment; all bedrooms will be accessed through the apartment entry door rather than being directly accessible from the front hallway;
- There will be 4 bedrooms in each apartment, including 1 in the basement;
- The third floor has a kitchen;
- There will be screening around the dumpster consisting of a 6-7 foot tall wooden fence on the south and west sides;
- There will be a swale at the back of the property to direct storm water into the woods and away from 15-17 Fearing Street;
- There will be a guardrail, slightly less than 3 feet high that will prevent vehicles from driving between the parking areas for 374 and 382 North Pleasant Street.

Bill Klaus of the Fire Department expressed concern about the proximity of the dumpster to the guardrail. He asked that the guardrail be constructed of metal rather than wood to prevent the spread of dumpster fires.

The Board asked the applicant to move the dumpster and its associated fence farther away from the guardrail. The applicant agreed to move the dumpster and fence to the north to line up with the northern edge of the driveway.

The Board asked about the number of bedrooms. The applicant stated that there will be 4 bedrooms on the second floor, associated with Apartment #2, and that there will be no bedrooms on the third floor. He also stated that there will be 3 bedrooms on the first floor, associated with Apartment #1 and 1 bedroom in the basement, also associated with Apartment #1.

The Board asked about the number of parking spaces. The applicant stated that there will be 4 parallel parking spaces proposed along the south side of the driveway and 5 in the new parking area to be created where the old volleyball court was located. He stated that the volleyball court is now an area of sand. He plans to grade and compact it and place trap rock gravel on the surface for the new parking lot.

Ms. Ashby asked about the proposed living area in the basement which will need ventilation. She also asked about the size of the storage spaces on the third floor and whether they could be used as bedrooms. She wished to ensure that these storage spaces would not be used as bedrooms.

Mark Snow, Assistant Building Commissioner, stated that a habitable room needs ventilation, either natural or mechanical. The basement living room space could have mechanical ventilation.

Mr. Biddle stated that there is now only one heating system in the building. The basement door at ground level will be made accessible from the outside for the furnace company. There was discussion about access to the oil burner. Mr. Snow stated that fire separation issues are being addressed. Mr. Biddle stated that the fire alert system will stay in place.

Bill Klaus of the Fire Department commented that the new plan for the driveway was better than the previous plan, although he was still concerned that access to the dumpster could be blocked, preventing the trash hauler from emptying it on a regular basis. The Board concluded that this was a problem for many properties in town and that there was little that the Board could do to prevent parking in front of the dumpster, other than to require posting of the driveway as a fire lane.

Mr. Biddle stated that the recycling bins would be stored next to the dumpster. He also stated that it was difficult to get tenants to recycle. He stated that he would try to find a trash hauler who would also pick up recycling.

Winifred Manning of 61 Fearing Street stated that she had received a letter from Gretchen Fox of 90 Fearing Street, expressing concerns about the application. She read Ms. Fox's letter and distributed copies to the Board. Mrs. Manning also asked about the number of tenants and the number of bedrooms. She expressed concern about the number of tenants and the number of cars. She asked that the guardrail be substantial and not made with chains. She expressed concerns about the storm drainage and asked whether the parking area would be paved.

Elissa Rubenstein of 38 Fearing Street expressed concern about the number of tenants and asked about how the town can enforce the limit on the number of people living in the house.

Bernie Rubenstein of 38 Fearing Street asked about how to prevent a fraternity from occupying this house.

The applicant stated that he had two separate groups of people who were not associated with a fraternity who wished to move into the house. He stated that tenants were willing to pay about \$500 to \$600 per month per person for an apartment.

Mr. Simpson asked about the responsibility for maintenance of the house and property. He pointed out that the lease puts the responsibility on the tenants but that the Management Plan stated that the responsibility would be the owner's.

Mr. Frank asked how it would be possible to create a guardrail that would allow the Fire Department to pass through to #374 North Pleasant but not allow the tenants to pass through. The Board concluded that it would not be feasible to provide access to the Fire Department while keeping others out and that a permanent, solid guardrail should be installed between the two properties. Bill Klaus of the Fire Department concurred with this assessment.

Ms. Ashby expressed concern about the proposed bedroom in the basement. She was particularly concerned about safety and security. The Board discussed this issue with Mr. Snow and Mr. Biddle and concluded that it would be possible to install a security screen over the basement windows that could be used for egress and that could be opened out, without special knowledge, without tools or keys. They concluded that the applicant should be required to install security screens on basement bedroom windows and to provide information about such security screens. Otherwise the basement bedroom would not be approved.

Mr. Frank stated that he knows Gretchen and John Fox of 90 Fearing Street, the people who wrote the letter presented by Ms. Manning. He stated that this would not affect his impartiality with regard to the application.

Mr. Frank MOVED to close the evidentiary portion of the public hearing. Ms. Ashby SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Discussion

Mr. Simpson asked if any of the Board members were inalterably opposed to the application. Mr. Frank and Ms. Ashby stated that they were not inalterably opposed to the application.

Mr. Simpson stated that if the application were to be approved it should have a number of conditions placed upon it. He suggested several conditions. He also noted that the existing property was non-conforming as to lot coverage and that the proposed parking lot could be reduced in size to make the property less non-conforming with respect to lot coverage. He also noted that the lot was non-conforming as to frontage. Under Section 9.22 of the Zoning Bylaw a non-conforming lot or building may be altered with a Special Permit from the Zoning Board of Appeals providing that the effect on the neighborhood is not substantially more detrimental.

Among other issues the Board discussed the following:

- The definitions of a two-family house and of a family under Section 12.14 of the Zoning Bylaw;
- The issue of subleases;
- Whether the upstairs storage rooms should be locked to prevent their use as bedrooms;
- The use of the basement area as a living space, including the issue of security screens for the proposed bedroom and ventilation for the entire basement living area;
- The location of appliances in the kitchens;
- The types of shrubs to be planted.

The Board discussed and listed conditions which they proposed to impose if the Special Permit were to be granted.

Public Meeting – Findings:

Under Zoning Bylaw Section 10.38 the Board found that:

- 10.380 and 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing uses because there are other multi-family houses in the neighborhood and the house is located on a heavily-traveled road.
- 10.382 and 10.385 – The proposal will not constitute a nuisance and the proposal reasonably protects the adjoining premises because there are conditions placed on the Special Permit that limit the number of tenants, the number of parking spaces and the level of noise, and that require exterior lights to be downcast and the dumpster to be screened.
- 10.383 – The proposal will not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because there will be adequate parking for 8 cars on the site and cars will have adequate space to turn around so that they can drive out onto North Pleasant Street without backing out.
- 10.384 – Adequate and appropriate facilities will be provided for the proper operation of the proposed use because the house is large enough to accommodate the proposed number of bedrooms plus common areas for living space; the lot is large enough to accommodate the required parking spaces.
- 10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the Bylaw because the Zoning Bylaw requires that there be a minimum of 2 parking spaces on the site for each dwelling unit or a total of 4 parking spaces, at a minimum. The proposed site plan shows 8 parking spaces, or 4 for each dwelling unit, which meets the parking requirements. There are no signs proposed for this property.
- 10.387 – The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements because the parking has been redesigned to provide for 4 standard-sized spaces and 4 compact spaces with adequate turn around space for all cars, allowing cars to exit the site without backing out onto North Pleasant Street. In addition the site plan shows the existing walkway that connects the driveway with the front entryway, providing pedestrian access to the front door from the parking areas.
- 10.388 – The proposal ensures adequate space for the off-street loading and unloading of vehicles, materials and equipment because the driveway is long and adequately wide for vehicles to use the driveway for unloading.
- 10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for

surface water because the building is connected to town sewer and water, the location for storage for recyclables will be presented to the Board for approval at a public meeting, a condition of the Special Permit requires that the owner make a contract with a local trash hauler for removal of trash and recyclables on a weekly basis, and the site plans show a new swale that will be constructed to direct storm water away from adjacent properties and towards a wooded area.

- 10.392 – The proposal provides adequate landscaping, including screening, because the approved site plan shows that the dumpster will be screened and a condition of the Special Permit requires that the applicant submit a revised landscaping plan for approval by the Board showing sizes and species of proposed shrubs.
- 10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because a condition of the Special Permit requires that all exterior lights shall be downcast and shall not shine onto adjacent properties or streets.
- 10.396 – The proposal provides screening for storage areas because the site plan calls for screening around the dumpster.
- 10.397 – The proposal provides adequate recreational facilities, open space and amenities for the proposed use because the lot is adequately sized for a two-family house, there is a large, covered front porch for sitting outside and there is additional lawn area and driveway area to the south and west sides of the house for more active recreation.
- 10.398 – The proposal is in harmony with the general purpose and intent of this Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants by providing additional housing within walking distance of the university and downtown.

Mr. Frank MOVED to approve the Findings. Ms. Ashby SECONDED the motion. The Board VOTED unanimously to approve the Findings.

Public Meeting – Decision:

Mr. Frank MOVED to approve the application along with the conditions that were discussed in the public meeting. Mr. Simpson SECONDED the motion. The Board VOTED unanimously to approve the application with the conditions that were discussed in the public meeting.

For all the reasons stated above the Board VOTED unanimously to GRANT a Special Permit, with conditions, under Sections 3.321 and 9.22 of the Zoning Bylaw, as applied for by David Biddle, to convert the existing building to a two-family dwelling and to alter the site improvements and renovate the building on a non-conforming lot, at 382 North Pleasant Street (Map 11C, Parcel 118, R-G Zone).

THOMAS SIMPSON

RUSSELL FRANK

JANE ASHBY

FILED THIS _____ day of _____, 2006 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2006.

NOTICE OF DECISION mailed this _____ day of _____, 2006
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2006,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, under Sections 3.321 and 9.22 of the Zoning Bylaw, as applied for by David Biddle, to convert the existing building to a two-family dwelling and to alter the site improvements and renovate the building on a non-conforming lot, at 382 North Pleasant Street (Map 11C, Parcel 118, R-G Zone), with the following conditions:

1. The building renovations and site improvements shall be built in accordance with the plans approved by the Board on July 27, 2006.
2. The property shall be managed in accordance with the Management Plan, as revised, approved by the Board on July 27, 2006.
3. If the residents of a dwelling unit are unrelated, as defined under the provisions of Section 12.14 of the Zoning Bylaw, then no more than four (4) individuals shall live in that apartment. The total number of unrelated people in the two dwelling units together shall not exceed eight (8).
4. Rooms shall be used as designated on the plan approved on July 27, 2006. There shall be no more than 4 bedrooms in each unit as shown on the approved plan. The total number of bedrooms in the two units shall not exceed eight (8). (See Conditions 16 and 17 below for limitations on the use of the basement bedroom.)
5. There shall be no more than eight (8) designated parking spaces on site. Four of the parking spaces shall be parallel spaces, of standard size (9' x 18'), located along the south side of the driveway. Four of the parking spaces shall be perpendicular spaces, of compact size (8' x 16'), located in a parking lot on the west side of the house.
6. The four (4) proposed parallel parking spaces along the driveway shall be marked with timbers or concrete wheelstops, mounted flush with the ground surface and anchored into the ground with appropriate anchoring devices to mark the limits of the 4 parallel parking spaces.
7. The driveway shall be posted as a fire lane in accordance with Fire Department memorandum dated July 14, 2006, prior to the issuance of a Certificate of Occupancy.
8. No overnight parking shall be permitted on site except in designated parking spaces.
9. No unregistered vehicles shall be parked on site, and no inoperable vehicles shall be parked on-site for a period to exceed two (2) weeks.

10. A guardrail shall be installed as shown on the plan approved on July 27, 2006, between the properties at 374 North Pleasant Street and 382 North Pleasant Street. The guardrail between the two properties shall be steel, substantial and not movable. The guardrail shall be of standard highway design. It shall be either (1) constructed with posts of 6" x 8" pressure-treated wood timbers and rails of galvanized steel as specified in Mass Highway Construction Standards, Sheet 401.10.0, "Steel Beam Guard Rail with Wood Post"; or (2) constructed with posts of "H"-post type galvanized steel and rails of galvanized steel as specified in Mass Highway Construction Standards, Sheet 401.1.0, "Steel Beam Highway Guard Type SS".
11. The dumpster shall be installed and maintained as shown on the plan approved on July 27, 2006, revised to show the dumpster lined up with the northern edge of the paved area. The dumpster shall be screened on the west and south sides by a solid fence approximately 6 or 7 feet high. The applicant shall submit details and or catalog information about the proposed dumpster screen or fence to the Board for approval at a public meeting prior to the issuance of a Certificate of Occupancy.
12. The owner shall contract with a trash and recycling contractor for removal of household trash and recycling on a weekly basis. Evidence of such a contract shall be presented to the Board for approval at a public meeting prior to issuance of a Certificate of Occupancy.
13. The location for storage of recycling bins shall be submitted to the Board for approval at a public meeting prior to issuance of a Certificate of Occupancy.
14. The property shall be maintained in a trash-free condition.
15. No furniture of any kind or grills shall be allowed in the front yard, on the roof or on the fire escape.
16. Information including catalog cuts, photographs and/or manufacturers specifications about the proposed security devices or screens to be used on the basement bedroom windows shall be submitted to the Board and approved at a public meeting prior to issuance of a Certificate of Occupancy for the basement bedroom.
17. The room labeled as a basement bedroom shall not be approved and used as a bedroom until the proposed window security devices have been installed to the satisfaction of the Building Commissioner.
18. The kitchen in each apartment shall be equipped with the appliances shown on the floor plans approved by the Board on July 27, 2006.
19. The owner of the property shall be responsible for all exterior maintenance, including plowing and shoveling of snow, mowing of the lawn, maintenance of the landscape, raking of leaves, maintenance of the exterior of the building and maintenance of the driveway and parking areas in good repair, free of ruts and washouts.
20. The owner's name, address and phone number shall be placed on file with the Building Commissioner, Health Department, Police Department and Fire Department prior to the issuance of a Certificate of Occupancy.
21. The two apartments shall be registered with the Health Department's Rental Registry. Evidence of such registration shall be presented to the Zoning Board for approval at a public meeting prior to the issuance of a Certificate of Occupancy.
22. A detailed landscape plan showing proposed species and sizes of the 6 proposed shrubs, shall be submitted to the Board and approved at a public meeting prior to the issuance of a Certificate of Occupancy.

23. Exterior lighting shall be downcast and shall not shine onto adjacent properties or streets.
24. The street address shall be displayed in manner that the Fire Department deems appropriate and shall be able to be seen from both directions on North Pleasant Street prior to the issuance of a Certificate of Occupancy. Each apartment shall be properly identified with a unit or apartment number or letter.
25. Audible sound emanating from the property or house shall not exceed ambient noise levels at the street and property line.
26. This permit shall expire in 2 years from the date of filing with the Town Clerk.
27. Upon change of ownership the new owner shall submit a Management Plan to the Board for review and approval at a public meeting.
28. The owner is responsible for informing the tenants of the conditions of this Special Permit.
29. This application is subject to Section 14 of the Zoning Bylaw, Phased Growth. The Zoning Board of Appeals has assigned a development authorization date of August 2006.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE